IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1051 OF 2007

IN

APPEAL (L) NO. 141 of 2007

IN

SUMMONS FOR JUDGEMENT NO.210 OF 2006

IN

SUMMARY SUIT NO. 319 OF 2005

Union of India .. Appellant

versus

Varghese George .. Respondent

...

Ms.S.I. Shah for the appellant.

Mr.M.A. Shah i/b A.G. Shah for respondent.

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

DATED : 2nd April 2007.

P.C.:

1. Taken up on board on request.

2. Heard.

3. This is an application for condonation of delay of 395 days in filing the appeal against the order passed by the learned Single Judge on 16th January 2006 in Summons for Judgement no. 210 of 2005 in Summary Suit no.319 of 2005. The explanation is sought to be given for delay relates to failure on the part of the concerned officer to apply certified copy and consequent delay in obtaining the certified copy which in turn resulted in delay in filing the appeal.

4. The appeal having been filed by Union of India and the decree which is required to be complied with by the Union of India is bound to create some burden on public ex-chequer, it would be necessary to consider the matter on merits as the point which is sought to be raised relates to absence and right to the decree holder is to claim the decretal amount in view of the notification which is said to have been issued by the government which prohibits the department from paying interest on the amount matured on Kisan Vikas Patra.

5. The mere delay in obtaining certified copy itself cannot be a ground for condonation of delay. However, considering the facts disclosed in the application and as the matter relates to the liability of the government, which in turn would be liability on the public ex-chequer, and the matter discloses an arguable point on merits, in our considered opinion, the explanation furnished by the respondent should be considered as sufficient cause for condonation of delay. However considering the fact that the delay is of 395 days and also a right has been accrued in favour of the respondent and condonation of delay would virtually result in denying the said right, it is necessary to compensate the respondent. In the result, Notice of Motion is allowed in terms of prayer clause (a) subject to the appellants paying the costs of Rs.25,000/- to the respondent. It is made clear that though initially costs as required to be paid by the appellants, the government is required to hold necessary enquiry to identify the person or persons or the officer or officers responsible for delay in filing the appeal and shall recover the same from the concerned person

or persons or an officer of officers, as the case may be. The steps taken by the appellant for such enquiry should be disclosed by the responsible officer of Union of India on affidavit to this court within a period of eight weeks from today. On conclusion of enquiry, the same fact shall also be brought on record by responsible officer of the government by filing affidavit in the appeal. On registration formalities being complied with, the appeal shall be listed for hearing on admission on 23rd April 2007.

6. Notice of Motion accordingly stands disposed of.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)